

**STATE OF MINNESOTA  
IN  
COURT OF APPEALS**



In the Matter of the Proposed Closing of  
Rollingstone Community School,

Save Our Schools Committee, an  
unincorporated organization of  
individuals who are citizens of and reside  
within Independent School District No.  
861,

**MOTION FOR STAY**

Petitioner,

vs.

APPELLATE COURT CASE NO: A18-0799

Independent School District No. 861,  
(Winona, Minnesota, Area Public  
Schools),

Respondent.

PLEASE TAKE NOTICE that the Petitioner Save Our Schools Committee, by its attorney, moves this Court for a stay of the Respondent School Board's decision to close Madison Elementary School and Rollingstone Community School, taken at the March 29, 2018, board meeting. Specifically, Petitioner requests the Court to order that the school buildings that were closed not be sold by the School District pending the resolution of this case. Petitioner is not asking to stop the reassignment of students to the three remaining elementary schools for the Fall 2018 term. The grounds for this motion are as follows:

1. Petitioner submitted a petition to Respondent requesting that the School Board stay the referenced closure decision. On June 7, 2018, Respondent voted 5-2 to deny Petitioner's request and approved a resolution to that effect drafted by the Superintendent, stating its reasons for rejection of the stay request. The petition and the School Board's Resolution denying the request for stay are attached as a separate file.

2. Immediately after adoption of the second resolution, a Board member moved to instruct the District's counsel to engage in negotiations with Petitioner and the motion was seconded. This motion was based on Petitioner's offer of settlement in exchange for a delay in the sale of the school buildings. Without discussion, the Board defeated that motion by a 2-5 vote.

3. In Fall 2017, Winona area voters cast 90 percent "No" votes to reject a school bond referendum which proposed closing elementary schools and building new school facilities.<sup>1</sup> One of the two elementary schools that are the subject of this appeal was proposed for closure in that referendum.

4. In January 2018, the Administration of the Winona school district began new efforts to close elementary schools. The Administration was following the same plan rejected by the voters but planning to do so in a different order by first closing schools and then seeking funds to build new school facilities. Sonneman Affidavit, Exh. A.

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<sup>1</sup> Ferris, "Winona Says No: Voters Strike Down \$82 Million Winona Schools Referendum," Winona Daily News, (November 7, 2017), [https://www.winonadailynews.com/news/local/winona-says-no-voters-strike-down-million-winonaschools-referendum/article\\_3dcc4a79-d032-598f-afce-6082d3047d9f.html](https://www.winonadailynews.com/news/local/winona-says-no-voters-strike-down-million-winonaschools-referendum/article_3dcc4a79-d032-598f-afce-6082d3047d9f.html).

5. The School Board authorized a public hearing on the school closures to take place on February 20, 2018. Sonneman Affidavit, Exh. B through D. That hearing did not take place due to a snow emergency day within the school district. The hearing was not legally convened and was not continued to a later date. The District Administration published notice of a new hearing for March 19, 2018, Sonneman Exh. E, but the School Board had not taken any action to direct that such hearing occur or to authorize the Administrator's actions. Sonneman Affidavit, Exh D-1. The public hearing was not properly noticed as required by law and was invalid.

6. During this period of time, two school board members actively campaigned to close the elementary schools. They stated their certain opinions that closure was necessary and published several newspaper opinion pieces in an effort to persuade the public and their fellow school board members. Sonneman Affidavit, Exh. F through H. Neither the public evidentiary hearings nor any School Board deliberations on the proposed closures had yet occurred. Without even hearing the public testimony, these board members were indifferent to and unpersuadable by possible evidence that the public might present to the board opposing closure or offering alternatives. These actions have denied the public, including Save Our Schools members, the process to which they are entitled by law. See Continental Property Group Inc. v City of Minneapolis, 2011 WL 1642510, (Minn. Ct. App. May 3, 2011)

7. In February 2018, the District convened a "Budget Reduction Task Force" which was intended to address an asserted budget shortfall, but actually was tool to advance the cause of school closures. Three-quarters of the membership of this "community" task

force were employees of the school district. Sonneman Affidavit, Exh. I. The Task Force voted to close elementary schools, but did so without ever seeing an actual budget. In fact, no budget was presented to the school board or public until shortly before a school board meeting on June 7, 2018, Sonneman Affidavit, Exh. J. This was three months after the Task Force finished its tasks and was disbanded, and two months after the school closure decision. Without a budget, neither Task Force nor the Board could cut the claimed \$731,706.49 from a budget. The Board did not have a sufficient record upon which to base a decision to close schools.

8. The closure decision was alleged to create net savings by consolidating K-4 classes into three buildings. The Task Force was not allowed to consider reduced revenues that would result from out-migration of students due to school closure and never saw estimates of the costs of closing the schools. The District has never made available the costs of reorganizing elementary education following the closure decision. The District has ample reason to expect significant disruptions would follow upon school closures. It had determined the number of elementary students who would need to change school if Madison and Rollingstone were closed, and this number further included many students who were relocated from one remaining school to another remaining school. Sonneman Affidavit, Exh. K.

9. The District's Resolution denying the stay request now claims that there are enormous burdens to undo the steps taken to reorganize elementary education in Winona for the Fall 2018 term. One must assume that the initial reorganizations costs are just as substantial as the burdens cited to undo the reorganization. It would appear likely that the

costs to close two elementary schools were greater than the amounts allegedly saved by closing those schools. The District would have been better off keeping the elementary schools open.

10. The decision to close two elementary schools has resulted in the three remaining elementary buildings facing severe capacity problems in Fall 2018. Using enrollments and classroom capacity figures from the 2017 referendum materials, one school, Washington-Kosciusko, will be at 119.2 percent capacity; a second, Goodview, at 105.6 percent capacity; and the third, Jefferson, at 96.3 percent capacity. Michlitsch Affidavit. Although these figures come from the District, the Superintendent now disputes these numbers and claims that there is sufficient space in the three remaining schools. The Superintendent's claim is based upon obviously manipulated data to support a desired conclusion and raises the serious question of whether students' well-being is being sacrificed to a predetermined agenda for school closure and then to distant future with new construction, which if it occurs at all.

11. Within weeks of the closure decision, the District announced that the Madison and Rollingstone buildings would be sold. Bids are due June 15, 2018. The District logically must not sell the buildings while it is not only possible but likely that the closure decision will be reversed and the buildings will be needed for essential education functions in the near future. The District has been unable to address what it would do if this appeal is successful and the schools were ordered to be reopened. Likewise, it has not explained how it will address overcrowding such as discussed above. Therefore, no actions to sell the buildings should or can be allowed until all appeals are exhausted.

12. The District wants to keep the future of the buildings separated from the decision to close the schools. However, Minn. Stat. §123B.51, subd 5, contemplates that a school is associated with the building in which it is located. Ultimately, it is the school building that is closed to future school use. Functions of or classes within the school may be moved elsewhere and this is not a closure. Citizens Concerned For Kids v. Yellow Medicine East Independent School District No. 2190, 703 N.W.2d 582, 586 (Minn. Ct. App. 2005). When all classes and students are removed from the building and no school functions are left at the building, that is a school closure. Concerned Citizens for the Preservation v. Mountain Iron-Buhl Independent School District No. 712, 431 N.W.2d 601, 602 (Minn. Ct. App. 1988). The future of the buildings are integral to the question of the use or the functions found there. If the school closure decision was illegal and invalid, the buildings would remain a school and could not be sold.

13. A decision reopening the schools after the buildings have been sold would be ineffective and futile. A stay stopping the sale of the buildings is necessary to allow the Court to render meaningful relief here. The school, the students and the buildings are really one entity for purposes of determining what is a school in the context of this case. The District's efforts to separate them are disingenuous. Separating the buildings use from the closure decision may appear to the District to be a fine tactic at the moment, but ignores reality and would lead to chaos. The buildings must be kept within the School District until the conclusion of this case.

14. A rash decision to sell the school buildings will lead to further chaos as well as preempt future decisions by a soon to be elected school board. In Fall 2018, the people

will elect four board members, which alone represents a majority of the board. Rodgers & Squires, “Last Minute Filing for Elections.” Winona Post (June 6, 2018)

<http://www.winonapost.com/News/Schools/ArticleID/59509/Last-minute-filings-for-elections>. Two present members, who support sale of the buildings, are not seeking re-election, and new persons will fill those seats. Two present members, who also support sale, are seeking re-election. Each faces a contested election, including a primary. Even with the re-election of the two incumbent members who support the Board’s actions challenged here, a new board could seek new directions. Sale of the buildings will deprive the new board of options available through use of these buildings.

15. Petitioners do not want to create chaos. They recognize the disruption of moving students from building to building; and believe that closing the elementary schools here has already resulted in just such disruptions. Petitioners likewise are concerned with other educational issues such as class sizes, classroom environments, and school over-crowding. Petitioners wish to find a solution in this motion for stay that will best serve the Winona community, the school district and the students.

16. Petitioner therefore propose that the stay be limited to prohibiting the District from selling the two elementary school buildings until the case is concluded. This action will protect the status quo. It will allow the District to have a broader selection of future options to address over-crowding in the remaining three elementary schools. It will leave for a period of time the option of not seeking a new school building through referendum.

Appellants believe that the sale of these buildings is intended to prevent future school boards from pursuing a course of action other than building a new elementary school.<sup>2</sup>

17. This motion is made on authority of Minn. R. App. Proc. 108, subd. 6, and the files and records herein.

Dated: June 11, 2018

*Karl W. Sonneman*

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<sup>2</sup> The District has announced that it is planning a Phase 1 referendum for Fall 2018. A Phase 2 in four years has been identified but not described. Sale of the buildings will force future boards in the direction of new construction and will preclude a board from selecting renovation of buildings such as Madison or Rollingstone. A renovation plan was discussed with the Superintendent, but was not even brought up for discussion before the School Board.